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5 Attorneys for Defendant CONSECO SENIOR HEALTH INSURANCE COMPANY

7 **UNITED STATES DISTRICT COURT**

8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 PAMELA THOMPSON, Individually)
11 and as Personal)
12 Representative of CHARLES)
THOMPSON, Deceased,)

CASE NO.: C 07-05437 PJH
[Sonoma County Superior
Court Case No. 241544]

13 Plaintiff,)

DEFENDANT'S CERTIFICATION
THAT PLAINTIFF AND HER
ATTORNEYS HAVE NOT DELIVERED
AGREED UPON CONSIDERATION
FOR SETTLEMENT; REQUEST TO
VACATE DISMISSAL AND RESTORE
CASE TO CALENDAR;
DECLARATION OF MARC J. WODIN

14 vs.)

15 CONSECO SENIOR HEALTH)
16 INSURANCE COMPANY, a)
17 Pennsylvania corporation,)
18 DOES 1 through XX)

19 Defendant(s).)

Assigned to the Honorable
Phyllis J. Hamilton

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21 **TO: THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**
22 **CALIFORNIA AND TO THE INTERESTED PARTIES AND THEIR ATTORNEYS OF**
23 **RECORD:**

24 Pursuant to the Order of Dismissal dated June 5, 2008,
25 defendant Conseco Senior Health Insurance Company hereby
26 certifies to this court that plaintiff and her attorneys have not
27 delivered agreed upon consideration for the settlement reached in

28
1
DEFENDANT'S CERTIFICATION THAT PLAINTIFF AND HER ATTORNEYS HAVE
NOT DELIVERED AGREED UPON CONSIDERATION, ETC.

1 this case at the time of the mediation on May 29, 2008; to wit,
2 plaintiff, and her attorneys have failed and refused to execute
3 the release and settlement agreement, which has been provided to
4 them, pursuant to the settlement reached at the time of the
5 mediation.

6 Accordingly, pursuant to said order, defendant requests that
7 this court vacate the dismissal entered on June 5, 2008, and
8 restore this matter to the calendar.

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10 DATED: August 4, 2008

LAW OFFICES OF MARC J. WODIN

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By /s/ Marc J. Wodin
MARC J. WODIN
Attorneys for Defendant CONSECO
SENIOR HEALTH INSURANCE COMPANY

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1 DECLARATION OF MARC J. WODIN
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3 I, MARC J. WODIN DECLARE:

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5 1. The facts set forth herein are personally known to
6 declarant, who has firsthand knowledge of the same, and if called
7 as a witness, said declarant could and would competently testify
8 thereto under oath.

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10 2. I am an attorney duly admitted to practice before this
11 court, and I am a principal in the Law Offices of Marc J. Wodin,
12 attorneys of record for defendant Conseco Health Insurance
13 Company in the above entitled action.

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15 3. This matter was mediated on May 29, 2008, before mediator
16 John Koeppel. A settlement was reached. On June 2, 2008, the
17 mediator filed a Certification of ADR Session, certifying that
18 the case settled at the mediation.

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20 4. One of the terms of consideration stated in the
21 settlement document prepared at the time of the mediation, and
22 signed by all parties and their attorneys, was that defendant
23 would provide a release and settlement agreement, which would be
24 executed by plaintiff and her attorneys.

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26 5. I thereafter provided such a release and settlement
27 agreement to plaintiff's attorneys. Plaintiff and her attorneys

1 have failed and refused to execute the release and settlement
2 agreement.

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4 6. Wherefore, pursuant to this court's order of June 5,
5 2008, defendant requests that this court vacate the dismissal
6 entered on June 5, 2008, and restore this matter to the calendar.

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8 I declare under penalty of perjury under the laws of the
9 United States of America that the foregoing is true and correct.

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11 Executed this 4th day of August, 2008, at Calabasas,
12 California.

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/s/ Marc J. Wodin
MARC J. WODIN
DECLARANT

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